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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YEMISI AKINYEMI,

4

PLAINTIFF,

5

-against-

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MICHAEL CHERTOFF, SECRETARY, DEPARTMENT  
OF HOMELAND SECURITY,

8

DEFENDANT.

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11

DATE: October 25, 2007

12

TIME: 10:30 a.m.

13

14

EXAMINATION BEFORE TRIAL of the

15

Defendant, MICHAEL CHERTOFF, SECRETARY DEPARTMENT

16

OF HOMELAND SECURITY, by a witness, EDWARD FOX,

17

taken by the Plaintiff, pursuant to a Court Order

18

and to the Federal Rules of Civil Procedure, held

19

at the office of MICHAEL J. GARCIA, ESQ., 86

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Chambers Street, New York, New York 10007, before

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KATE FRANCOMACARO, a Notary Public of the State of

22

New York.

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2 A P P E A R A N C E S:

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4 K.C. OKOLI, ESQ.  
Attorney for the Plaintiff  
5 330 Seventh Avenue, 15th floor  
New York, New York 10001

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MICHAEL J. GARCIA, ESQ.  
UNITED STATES ATTORNEY  
FOR THE SOUTHERN DISTRICT  
Attorneys for the Defendant  
86 Chambers Street  
New York, New York 10007  
10 BY: JOHN DALTON CLOPPER, ESQ.

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ALSO PRESENT:  
CYNTHIA J. PREE

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2 E D W A R D F O X, called as a witness, having  
3 been first duly sworn by a Notary Public of the  
4 State of New York, was examined and testified as  
5 follows:

6 EXAMINATION BY

7 MR. OKOLI:

8 Q. Please state your name for the record.

9 A. Edward Fox.

10 Q. Where do you reside?

11 A. At 1210 Corbin Street, Elizabeth, New  
12 Jersey 07201.

13 Q. Good morning. My name is K.C. Okoli.  
14 I represent the Plaintiff in this lawsuit and I  
15 will asking you a couple of questions in connection  
16 with the lawsuit. What I ask is your best  
17 recollection when I ask you a question and if you  
18 don't understand, let me know and I will either  
19 rephrase the question or ask the question in a way  
20 that you understand and if you anticipate what my  
21 question is going to be, wait until I finish asking  
22 the question. The reason for that is the court  
23 reporter lady here can't take down two people  
24 speaking at the same time and if during the course  
25 of the deposition, if you need to take a break, you

1 FOX

2 may do so we just have it on record that we are  
3 taking a break. If I ask you a question and you  
4 respond, I will assume that you understood the  
5 question. Fair?

6 A. Fair enough.

7 Q. And verbalize all of your answers  
8 instead of a shake or nod of the head because she  
9 can't take down gestures.

10 What is your full name?

11 A. Edward Thomas Fox.

12 Q. And the address that you just gave, is  
13 that your work address?

14 A. Yes.

15 Q. Since when have you been working out of  
16 that location?

17 A. I think I have been there since 1997.

18 Q. And who is your employer?

19 A. U.S. Customs and Border Protection.

20 Q. And what's your current job title?

21 A. Deputy chief officer.

22 Q. Since when did you become Deputy chief  
23 officer?

24 A. In 2005.

25 Q. Do you know what month in 2005?

FOX

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2 A. I am afraid I don't recall.

3 Q. Was that before December of 2005?

4 A. Yes, it was before December of 2005.

5 Q. Prior to you becoming Deputy chief  
6 officer, what title did you hold?

7 A. A supervisor of CBP. Short for customs  
8 and border protection.

9 Q. While supervisor of CBP, which location  
10 did you function?

11 A. The same location.

12 Q. And at the time that you were --

13 A. Actually I should correct that. I did  
14 have, as a supervisory officer, I did work in a few  
15 different locations around the border.

16 Q. Do you recall which locations you  
17 worked in 2005?

18 A. Yes, 1210 Corbin Street.

19 Q. Where is your place of birth?

20 A. Brooklyn, New York.

21 Q. And just for the record, what's your  
22 race?

23 A. White.

24 Q. What is your highest level of  
25 education?

FOX

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2 A. I have some college. I did not  
3 complete my college degree.

4 Q. Which college is that?

5 A. Rutgers University, Cook College.

6 Q. As deputy chief officer, what are your  
7 duties?

8 A. My duties, my current duties?

9 Q. Yes.

10 A. To implement programs that come from  
11 headquarters into the Newark seaport.

12 Q. What you just described as your duties,  
13 has that been the case since you became deputy  
14 chief officer?

15 A. Yes.

16 Q. In your position as senior CBP officer,  
17 what were your duties?

18 A. My duties were to supervise the  
19 bargaining unit over performing bargaining units of  
20 first line supervisors.

21 Q. Who would the officers be?

22 A. CBP officers.

23 Q. When did you first start working for  
24 the customs and its predecessor?

25 A. In September of 1986.

FOX

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2 A. A customs and border protection officer  
3 in Newark seaport.

4 Q. Do you know Mr. Matella is a union  
5 representative?

6 A. He is. I am not certain exactly what  
7 position he holds.

8 Q. Have you ever met with Mr. Matella in  
9 his capacity as an union representative?

10 A. I have.

11 Q. And can you give us an estimate of how  
12 many times you met with him in his capacity as a  
13 union representative?

14 A. I would be speculating. More than  
15 once.

16 Q. Let me break it down this way. Prior  
17 to 1995, had you met him in his capacity as a union  
18 representative?

19 A. I did not.

20 Q. In 1995, did you meet with him in his  
21 capacity as a union representative?

22 A. No.

23 Q. Let me go back. Prior to 2005, had you  
24 met Mr. Matella in his capacity as a union  
25 representative?

FOX

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2 A. I don't recall.

3

4 Q. Do you recall whether in 2005 you met  
5 with him in his capacity as a union representative?

6

7 A. Yes.

8

9 Q. Other than Mr. Matella, had you met  
10 with other union representatives that you know as  
11 CBP?

12

13 A. Do I know any other union  
14 representatives who are CBP officers?

15

16 Q. Yes, had you met with these other CBP  
17 officers in their capacity as union  
18 representatives?

19

20 A. Yes.

21

22 Q. And did you meet with these union  
23 representatives as part of an investigation of an  
24 employee?

25

26 A. I have met with union reps as part of  
27 the investigations of employees, yes.

28

29 Q. Do you know how many times you have met  
30 with union reps as part of the investigations of an  
31 employee?

32

33 A. I can't tell you. I would have to  
34 check my records.

35

36 Q. When you were a union member, did you



FOX

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2 Q. Did you meet with Mr. Matella in  
3 connection with an investigation of the Plaintiff's  
4 conduct on December 5, 2005?

5 A. I am not certain of the date, but I did  
6 meet with Mr. Matella in connection with the  
7 Plaintiff.

8 Q. How many times did you meet with  
9 Mr. Matella and the Plaintiff in connection with  
10 this investigation?

11 A. I am not certain. I believe it was  
12 twice, but I am not certain.

13 Q. Do you recall how the first meeting  
14 came about?

15 A. I was asked to sit in on a meeting with  
16 the employee, union rep and the employee  
17 supervisor.

18 Q. Who asked to you sit in at this  
19 meeting?

20 A. The employee's department deputy chief.

21 Q. Who is the employee's department deputy  
22 chief?

23 A. Robert Hoscou.

24 Q. Were you told this verbally or was this  
25 a memo to this effect?

1 FOX

2 A. Verbally.

3 Q. The first meeting, who was present at  
4 this meeting?

5 A. I know for certain -- I believe it was  
6 the Plaintiff, Mr. Matella and Dominick Calise who  
7 I believe at the time was a first line supervisor.

8 Q. What happened at this meeting?

9 A. To the best of my recollection, there  
10 was a was a question about some behavior in which  
11 the Plaintiff had engaged that the first line  
12 supervisor was looking to get a statement from the  
13 employee on. When we met Mr. Matella, he asked if  
14 we had done a general notice and Winegarden rights  
15 and Kenny's rights. I did not know prior to the  
16 meeting what the nature was. I think we stopped  
17 there, broke, went back and I consulted with LER  
18 about the general nature and we proceeded to give  
19 the general notice Winegarden rights and Kenny's  
20 rights.

21 Q. I am trying to focus on the first  
22 meeting. Do you recall whether the Plaintiff was  
23 asked to give a written statement at that meeting?

24 A. I don't recall.

25 Q. Do you recall Lorraine Spina being at

1 FOX

2 that meeting?

3 A. I do know her.

4 Q. The very first meeting, do you recall  
5 her being at that very first meeting?

6 A. I don't recall.

7 Q. Did you ask any questions at the very  
8 first meeting?

9 A. I don't recall.

10 Q. Did you make any notes at that first  
11 meeting? Did you take any notes?

12 A. I don't recall. I apologize, but I  
13 don't recall.

14 Q. Did you observe anyone taking notes at  
15 the very first meeting we are talking about?

16 A. Not that I am aware of.

17 Q. Was that first meeting audio-taped?

18 A. No.

19 Q. Was it video-recorded?

20 A. No.

21 Q. Was it recorded mechanically by a  
22 stenographer?

23 A. No.

24 Q. Is there a document that you are aware  
25 of that would have the people who were present at

1 FOX

2 that very first meeting?

3 A. I am not aware if one exists or not.

4 Q. Where did this meeting take place?

5 A. 1210 Corbin Street.

6 Q. Do you recall whether it took place in  
7 someone's office or in the hall or in a conference  
8 room?

9 A. In someone's office.

10 Q. Do you recall whose office it was?

11 A. I thought it was the office of Dominick  
12 Calise, but I am not certain.

13 Q. What was your understanding of the  
14 purpose of the meeting when you were asked to sit  
15 in?

16 A. That there had been some question about  
17 some actions were taken by the Plaintiff and that  
18 the supervisor was going to ask the Plaintiff to  
19 give a statement as to what exactly happened.

20 Q. So there was going to be some  
21 investigation of the conduct of the Plaintiff?

22 A. At the point I went into the meeting, I  
23 wasn't certain whether there was an investigation  
24 or some sort of routine operational questions.

25 Q. But you understood that the Plaintiff

1 FOX

2 of Winegarden rights during any previous  
3 investigation.

4 Q. As of the time, did you know that prior  
5 to the investigation of an employee who is a union  
6 member that that employee is entitled to Winegarden  
7 rights?

8 A. Say that to me again.

9 Q. Prior to this meeting with an employee,  
10 did you know that for an employee, a union member  
11 to be questioned in any way, shape or form, that  
12 person has to be given a statement of certain  
13 rights?

14 MR. CLOPPER: Objection. Vague and  
15 ambiguous as to any shape or form.

16 Q. Prior to your meeting with Mr. Matella  
17 and the Plaintiff, did you know that for an  
18 employee to be questioned, an employee who is a  
19 union member, that that employee had to be given a  
20 statement of certain rights including Winegarden  
21 rights?

22 MR. CLOPPER: Objection. It assumes  
23 that it had to be done for every case. Go ahead  
24 and answer.

25 A. My understanding was that if an

1 FOX

2 employee was being questioned and the employee  
3 believed it might lead to discipline, that they  
4 were entitled to Winegarden rights.

5 Q. As you sit here today, do you know if  
6 the questioning of Ms. Akinyemi led to a  
7 discipline?

8 A. I assume since we are sitting in a  
9 deposition that it did.

10 Q. At the meeting that in which you were  
11 present, who was the most senior member. When I  
12 say the most senior member, the most senior  
13 employee of CBP at the meeting at which you recall?

14 A. It was probably me.

15 Q. Were you representing management at  
16 that meeting?

17 A. I was serving as a witness. I was not  
18 the supervisor who was conducting the discussion  
19 with the Plaintiff so I was serving as a witness.

20 Q. When you say you were serving as a  
21 witness, were you serving as a witness on behalf of  
22 management?

23 A. Yes.

24 Q. As you sit here today, do you have  
25 personal knowledge of anyone who was separated from

1 FOX

2 service at CBP solely for accessing a restricted  
3 area?

4 A. I do not.

5 Q. Do you know Jolanta Gluba?

6 A. I know the name. I don't know the  
7 individual.

8 Q. Do you know Alba Mandez?

9 A. No.

10 Q. Do you know Shamilla Hock?

11 A. No.

12 Q. Or Asharef Asad?

13 A. I know the name, but not the  
14 individual.

15 Q. Do you know whether she is an employee  
16 of the CBP?

17 A. That's how I recognize the name, yes.

18 Q. What else do you know about Asharef  
19 Asad?

20 A. I am sorry. I didn't hear you.

21 Q. Other than Asharef Asad being a CBP  
22 employee, what else do you know about Asharef  
23 Asad?

24 A. Nothing.

25 Q. How do you know that she is a CBP

1 FOX

2 this statement was submitted on 12/19/05 by

3 Ms. Akinyemi?

4 A. No, I am afraid it doesn't. Would you  
5 like me to read the whole document?

6 Q. Yes, you can. It does not refresh your  
7 recollection? Were you present when Plaintiff's  
8 Exhibit 1 at today's deposition was given to  
9 Ms. Akinyemi?

10 A. This document?

11 Q. Yes.

12 A. Yes.

13 Q. And were you at that meeting of  
14 12/19/05 when it was given to her?

15 A. Yes, again I don't recall the specific  
16 date.

17 Q. Do you have any reason to believe that  
18 the date 12/19/05 on the top of the document is  
19 incorrect?

20 A. I do not.

21 Q. The second sentence says, "The written  
22 statement and subsequent interview were in regards  
23 to an allegation that Officer Akinyemi misused her  
24 position as a CBP officer." Do you see that?

25 A. Yes.



1 FOX

2 Q. Does that refresh your recollection as  
3 to an interview following the submission of a  
4 written statement prior to 12/19/05?

5 MR. CLOPPER: Objection. Asked and  
6 answered. You can answer.

7 A. It does not.

8 MR. OKOLI: Thank you.

9 MR. CLOPPER: I have no questions for  
10 Officer Fox. I take it the deposition is  
11 concluded.

12 (Whereupon, at 11:00 a.m., the  
13 Examination of this Witness was concluded.)

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\_\_\_\_\_  
EDWARD FOX

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18 Subscribed and sworn to before me

19 this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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21 \_\_\_\_\_  
NOTARY PUBLIC

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